



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0470]

RIN 1625-AA09

Drawbridge Operation Regulation; Apalachicola River, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedules for two bridges that cross the Apalachicola River in Florida. First, the CSX Railroad requested to modify the operating schedule of their swing bridge at mile 105.9, at River Junction to require eight hours advanced notice at all times. Second, the Apalachicola and Northern Railroad (ANRR) requested to maintain the swing bridge at mile 4.5 (GIWW mile 347.0 East of Harvey Lock (EHL)), at Apalachicola, untended and in the open-to-navigation position at all times.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by docket number USCG-2012-0470 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504-671-2128, email David.M.Frank@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0470), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received

at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0470" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the

"Keyword" box insert "USCG-2012-0470" and click "Search."
Click the "Open Docket Folder" in the "Actions" column.
You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Code of Federal Regulations (CFR) under 33 CFR part 117.5 requires that except as otherwise authorized by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart. Presently, one bridge over the Apalachicola River is listed as having a special operating schedule under 33 CFR 117 Subpart B - Specific Requirements. Under 33 CFR 117.258, the draw of the CSX Railroad bridge at River Junction, mile 105.9 on the Apalachicola River, shall open on signal Monday through Friday from 8 a.m. until 4 p.m. At all other times the bridge will open on signal if at least four hours notice is given. This rule proposes to change the notice required for opening from four hours to eight hours for the CSX Railroad bridge.

A second bridge, the ANRR bridge at mile 4.5 on the Apalachicola River, (GIWW mile 347.0 EHL) in Apalachicola does not have a specific operating schedule, opening as required under 33 CFR 117.5. The Port of St. Joe, FL, owner of the bridge, has taken the rail line out of service and has an embargo to cease train operations for Port St. Joe and north of the Apalachicola River due to the absence of shipments coming in/out of Port St. Joe. While the

embargo remains in effect, the operator of the bridge, ANRR, requests to maintain the swing bridge in the open-to-navigation position in accordance with 33 CFR 117.41. This rule proposes to add an operating schedule specific to the ANRR bridge under 33 CFR 117.258, stating that the bridge will be maintained in the open-to-navigation position.

Prior to the requests to change the operating schedules for these two bridges, no previous requests for changes have been received. These requests were initiated without consultation of waterway users but the USCG Bridge Administration Office in New Orleans was consulted for guidance on how to comply with the requirements of 33 CFR part 117.41.

C. Basis and Purpose

The CSX swing bridge across the Apalachicola River, mile 105.9, presently opens on signal for the passage of vessels Monday through Friday from 8 a.m. until 4 p.m. At all other times, the bridge opens on signal if at least four hours advanced notice is given. The bridge owner has requested to change the operation regulations to reflect usage of the bridge by mariners. The request was made based upon a documented decrease in the number of requests for openings in the last three years. In 2010, the bridge opened 12 times for the passage of vessels. Eight of those

openings were for either a United States Coast Guard (USCG) vessel or for a United States Army Corps of Engineers (USACE) vessel. In 2011, the bridge opened four times for the passage of vessels. Three of those openings were for either a USCG vessel or for a USACE vessel. Thus far in 2012, the bridge has only opened one time for a USACE vessel. It should be noted that all of the openings in the past three years have occurred between 8 a.m. and 4 p.m.; therefore, the bridge opened on signal for their passages. Information gathered regarding the decrease in vessel movements indicates that the lack of commercial facilities and the lack of maintenance on the waterway have contributed to the decline in traffic. While water elevations may return to their pre-drought levels, there is presently no evidence that the number of requests for bridge openings will increase in the future due to limited industrial development along the waterway. Accordingly, the bridge owner requested to change the operation regulations so that the bridge is allowed to open on signal at all times if at least eight hours advanced notification is given. USACE and USCG units using the waterway indicated that the proposed change to the operation of the bridge will not affect their ability to maintain the

waterway and they have no objections to the proposed change.

The ANRR swing span bridge crosses the Apalachicola River at mile 4.5 (GIWW mile 347.0 EHL) and is required to open on signal for the passage of vessels. Since the bridge owner applied for and received an embargo for the suspension of train traffic on the line, the operation of the bridge is unnecessary and the operator of the bridge requested permission to leave the bridge in the open-to-navigation position and have the bridge untended. The bridge provides unlimited vertical clearance and 119 feet of horizontal clearance in the open-to-navigation position. Transit times for mariners should not be impeded with the bridge left in the open-to-navigation position. The bridge owner/operator will be required to maintain all bridge navigation lights in proper working order and will be required to periodically check the lights to see that they are working.

D. Discussion of Proposed Rule

The proposed rule for the CSX Railroad Bridge will require all vessels wishing to transit through the bridge site and needing the bridge to be opened for their passage to provide eight hours advanced notification. The proposed rule will require mariners to provide an additional four

hours of advanced notification of arrival to transit through the bridge. For vessels wishing to transit through the bridge site between the hours of 8 a.m. and 4 p.m. Monday through Friday, these vessel operators will now be required to contact the bridge owner at least eight hours prior to transiting the bridge. As all openings in the past three years have been during the day, this requirement will be new to any vessels wishing to transit through the bridge site during these time frames. Several government vessels transit the waterway past the bridge site to conduct maintenance on the waterway. USACE and USCG units transiting the waterway indicated that the proposed change to the operation of the bridge will not affect their ability to maintain the waterway and they have no objections to the proposed change.

The proposed rule for the ANRR bridge should not cause any undue burden on any vessels as the bridge will remain in the open-to-navigation position and allow all vessels presently using the waterway at the bridge site to transit the bridge site without delay.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of

these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We consider the changes proposed in this rule to be minimal that a full Regulatory Evaluation is unnecessary. Very few vessels will be impacted by the proposed changes and those few vessels should be able to provide adequate advanced notification of their arrivals as is already done for the CSX Railroad bridge and vessels may transit through the ANRR bridge without delay as it will be maintained in the open-to-navigation position.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a

significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the Apalachicola River above mile 105.9. This action will not have a significant economic impact on a substantial number of small entities because these few vessels should be able to provide adequate advanced notification of their arrivals as is already done on this waterway for three other movable bridges located upstream and downstream of this bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be

received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of

Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. This proposed rule involves the regulation of drawbridge operations. This rule is categorically excluded from further review under paragraph 32(e) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.258, a new paragraph (a) is added and the current regulation is revised and redesignated as paragraph (b) to read as follows:

§117.258 Apalachicola River.

(a) The draw of the Apalachicola and Northern Railroad Bridge, mile 4.5 (GIWW mile 347.0 EHL), at Apalachicola, is maintained in the fully open-to-navigation position and untended. The bridge will not be returned to service until proper notification is published in Federal Register.

(b) The draw of the CSX Railroad Bridge, mile 105.9, at River Junction shall open on signal if at least eight hours notice is given.

Dated: July 13, 2012

Peter Troedsson

Captain, U.S. Coast Guard

Commander, Eighth Coast Guard District

Acting

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